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POLICY ISSUES: EMERGING POLICY ISSUES

Promotion of access to information, public participation in decision-making and access to justice in environmental matters

Report of the Executive Director

Summary

The present report highlights the need for international action for the promotion of access to information, public participation in decision-making and access to justice in environmental matters as one of the critical elements for the United Nations Environment Programme (UNEP) to discharge its mandate, as contained in the Nairobi Declaration on the Role and Mandate of UNEP, and to address its priority areas, as set out in Governing Council decision SS.V/2.

Suggested action by the Governing Council

The Governing Council may wish to consider adopting a decision along the following lines:

The Governing Council,

Recalling principle 10 of the Rio Declaration on Environment and Development, 1/

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* UNEP/GC.20/1.

1/ The text of principle 10 of the Rio Declaration is reproduced in paragraph 1 of the main body of the present report.

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Recalling also programme area G of the Programme for the Development and Periodic Review of Environmental Law for the 1990,

Bearing in mind that the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, developed under the auspices of the Economic Commission for Europe, which was opened for signature in Aarhus, Denmark, on 25 June 1998, is open for accession by any Member State of the United Nations,

Conscious that the entry into force of the Aarhus Convention, which is targeted for the year 2000, will contribute to the strengthening of internationally accepted legal principles of access to information, public participation in decision-making and access to justice on environmental matters,

1. Requests the Executive Director to initiate, in consultation with Governments and in close collaboration with the Economic Commission for Europe and other relevant organizations, a process to examine possible ways and means to improve access to environmental information, public participation in decision-making and access to justice in environmental matters and the need for and feasibility of appropriate legal instruments at the regional and global levels;

2. Calls upon Governments that are in a position to do so to provide financial and technical resources for the above-mentioned process;

3. Requests the Executive Director to report the outcome of the above-mentioned process to the Governing Council at its twenty-first session.

I. INTRODUCTION

1. As stated in principle 10 of the Rio Declaration on Environment and Development, adopted by the United Nations Conference on Environment and Development in June 1992:

> "Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided."

2. Coherent and cost-effective institution-building for the sound management of the environment and sustainable development requires coordination at various levels and the involvement of all stakeholders. At the national level, it will be necessary to broaden the range of actors who share the environmental-protection and management tasks. For that to be done, the participation of various actors in environmental decision-making must be enhanced, which, in turn, requires improved access to environmental information. Such national efforts may be reinforced by relevant international action, such as enabling access by developing countries to information relevant for environmental decision-making or providing training to develop expertise in analysing the available environmental information.

3. There is a need, at the national level, for Governments and law-making bodies to establish or enhance judicial and administrative procedures for legal redress and remedy for actions affecting the environment that may be unlawful or infringe on rights under the law, and to provide access to individuals, groups or organizations with a recognized legal interest. Access to effective judicial and administrative channels should be provided for affected individuals and groups to ensure that all authorities remain accountable for their actions in accordance with their obligations, taking into account the judicial and administrative systems of the country concerned.

4. In general, concerted efforts by Governments to promote access to information, public participation in decision-making and access to justice in environmental matters seems to be a cost-effective means of contributing to the achievement of global environmental goals through the involvement of all stakeholders.

II. INTERNATIONAL ACTION TO PROMOTE ACCESS TO INFORMATION, PUBLIC PARTICIPATION IN DECISION-MAKING AND ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS

A. Action by UNEP

5. In recognition of the above, the UNEP Programme for the Development and Periodic Review of Environmental Law for the 1990s (Montevideo Programme II), adopted by the Governing Council in its decision 17/25 of 21 May 1993, sets out, in its programme area G (Environmental awareness, education, information and public participation), the objective of promoting public awareness of international environmental issues and regimes through education, provision of information and greater public participation in the consideration of international environmental regimes and the development of national laws, rules and standards. The strategy for achieving that objective is that of adopting and actively pursuing public-awareness programmes relating to environmental issues and the development and implementation of international and national regimes concerning the environment and associated institutional mechanisms, in cooperation, wherever appropriate, with other bodies, including governmental and non-governmental organizations and educational institutions. The activities envisaged under the programme area include, inter alia: the promotion of institutional mechanisms for the availability of educational and informative material on environmental issues; and the facilitation of public participation, including increased access to information, at appropriate stages in environmental decision-making, especially with regard to legislative, administrative and enforcement processes at the national and international levels and bearing in mind principle 10 of the Rio Declaration.

6. UNEP has continued to collect, organize and disseminate environmental information and undertake environmental assessments through its programmatic activities and networks. UNEP's services are aimed at providing environmental information and assessment and constitute an effective link between the scientific community and policy makers, thus providing a scientific basis for institution-building. In the field of environmental law, UNEP, in collaboration with Governments and relevant organizations, has intensified its efforts to fully implement programme area G of the Montevideo Programme II. While UNEP endeavours to promote access to environmental information, public participation in decision-making and access to justice in environmental matters through awareness-raising, training and other capacity-building activities, the need for Governments to strengthen in their countries appropriate procedures and mechanisms in this field has been noted.

7. While UNEP has continued to promote and assist in the development and effective implementation of national and international environmental law, with the support of its environmental-information services, a gap has been noted in the legal means for involving and empowering all sectors of the civil society and segments of Governments to carry out their respective responsibilities in the protection of the environment and the achievement of sustainable development.

8. In the field of chemicals, UNEP, along with the United Nations Institute for Training and Research (UNITAR), actively collaborates with the Organisation for Economic Co-operation and Development in promoting Pollutant

Release and Transfer Registers (PRTRs). UNEP is currently actively assisting several countries with economies in transition to establish PRTRs. In addition, UNEP is the manager of the international PRTR clearing-house. PRTRs potentially address any chemical threat across all environmental media.

B. Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention)

9. The Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention), developed under the auspices of the United Nations Economic Commission for Europe (ECE), was adopted in Aarhus, Denmark, on 25 June 1998. The Convention covers three main issues, often referred to as its three pillars:

(a) Access to environmental information;

(b) Public participation in environmental decision-making processes;

(c) Access to independent review procedures enabling the public to enforce environmental laws and to protect its relevant rights.

10. Those three pillars of the Convention form a coherent whole. While leaving to the Parties a considerable amount of discretion to implement provisions of the Convention in a way that best fits their national needs, in each of the pillars of the Convention applies a rights-based approach. The Convention guarantees the rights to the public regardless of nationality, citizenship or domicile. Non-governmental organizations are granted similar rights as well.

11. The Convention leaves to the Meeting of the Parties to establish, on a consensus basis, optional arrangements of a non-confrontational, non-judicial and consultative nature for reviewing compliance with the provisions of the Convention.

12. In line with Agenda 21, in which Governments emphasized the importance of the involvement of major groups, the Aarhus Convention provides civil society with the tools and procedures necessary for its active participation in the formulation and implementation of environmental policies. This participatory approach has been recognized as significantly improving national, regional and global efforts towards sustainable development.

C. Environmental conventions and national legislation

13. Many global and regional environmental conventions contain provisions that identify the importance of providing access to environmental information, both at the national and international levels, as a means for achieving their objectives. Examples of such provisions may be found in article 6 of the United Nations Framework Convention on Climate Change (i.e., the Parties are to promote and facilitate public access to information on climate change and its effects, and public participation in addressing climate change and its effects and developing adequate responses), article 9 of the Montreal Protocol on Substances that Deplete the Ozone Layer (i.e.,

the Parties are to cooperate in promoting public awareness of the environmental effects of the emission of controlled substances and other substances that deplete the ozone layer), and article 13 of the Convention on Biological Diversity (i.e., the Parties are to cooperate in developing educational and public-awareness programmes with respect to the conservation and sustainable use of biological diversity). In the field of chemicals, the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade is designed to facilitate international information exchange about the characteristics of hazardous chemicals by providing for a national decision-making process on their import and export and by disseminating these decisions to Parties, with a view to the protection of human health and the environment.

14. At the national level, there has been progress in a number of countries in all regions in developing legislation related to the promotion of public access to environmental information.

D. Gaps

15. There has been a growing recognition of the importance of providing and guaranteeing access to environmental information as an essential precondition for the full and effective preparation and implementation of environmental policies and for achieving global environmental goals. As noted above, there is already a European convention – the Aarhus Convention – but, despite the fact that any State Member of the United Nations may accede to the Convention upon approval by the Meeting of the Parties (article 19, paragraph 3), the Aarhus Convention is the result of negotiations within only one region. Therefore, there is no a truly global mechanism that provides an overall institutional setting and response to the need to involve and empower all sectors of civil society and relevant segments of Governments to discharge their respective rights and responsibilities in the protection of the environment and achievement of sustainable development.

16. Furthermore, while the enhancement of public participation in environmental decision-making and access to justice in environmental matters would significantly contribute to the achievement of environmental goals at all levels, many countries lack the legal and institutional modalities for doing do.

III. A WAY FORWARD

17. Whether UNEP can be fully effective and have maximum impact as the principal United Nations body in the field of the environment and in discharging functions as mandated in the Nairobi Declaration on the Role and Mandate of UNEP depends to a considerable extent upon the progressive involvement of all sectors of the civil society and relevant segments of Governments in informed environmental decision-making at the national and international levels. Given the transboundary nature of global environmental problems, there would be a need for a globally coordinated mechanism and legal enabling framework for promoting and helping to ensure better access to environmental information, with the support of international organizations and their related assessment and monitoring networks. Such coherent international action might be supported by relevant legislative, administrative and enforcement processes.

18. Given the above, it is proposed that UNEP initiates, in consultation with Governments and in close collaboration with the Economic Commission for European and other relevant organizations, a process to examine possible ways and means to improve access to environmental information, public participation in decision-making and access to justice in environmental matters and the need for and feasibility of appropriate legally binding instruments at the regional and global levels.